

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Transferred Application No. 261/1986.

- 1) Shri Mohamad Abbas Anasari.
- 2) Sakharam Bapu.
- 3) M.H. Tambe.
- 4) S.S. Masurkar.
- 5) Babaji Shamkar.
- 6) Shamim Ahmed.
- 7) Danial Samuel.
- 8) Bindin Sattu.
- 9) S.N. Panchal.
- 10) Nohar Singh Thonari Singh,
Bombay Division of Western Railway,
Bombay Central,
BOMBAY - 400 008.

... Applicants.

V/S

- (1) Union of India,
Through the General Manager,
Western Railway, Churchgate,
BOMBAY - 400 020.
- 2) The General Manager,
Western Railway, Churchgate,
BOMBAY - 400 020.
- 3) The Divisional Railway Manager,
Western Railway, Bombay Division,
Bombay Central,
BOMBAY - 400 008.
- 4) The Sr. Divisional Electrical
Engineer(Traction/Operation),
Bombay Central,
BOMBAY - 400 008.

... Respondents.

Coram: Hon'ble the Vice-Chairman, B.C. Gadgil.

Hon'ble Member, J.G. Rajadhyaksha(A).

Appearances:

Mr.G.K. Masand, Advocate
for the Applicants.

Mr.R.C. Master, Counsel
for the Respondents.

JUDGMENT:-

(Per B.C. Gadgil, Vice-Chairman)

Date: 12/10.6.1987.

Writ Petition No. 333 of 1982 of the file of the High Court of Judicature at Bombay is transferred to this Tribunal for decision.

2. The 10 applicants are the employees of the Western Railway. After entering into service many years back they were duly promoted and confirmed in Class-III posts as Electrical Fitters in the grade of Rs. 380-560. Thereafter, they were promoted on ad-hoc basis as Electrical Chargemen. Dates of such ad-hoc promotions are different in the case of the applicants. For example applicant No. 10 was promoted in 1973, while applicant Nos. 1 & 2 were promoted in 1975. The ad-hoc promotions of applicant Nos. 7, 8 & 9 took place in 1976 and applicant Nos. 3 & 6 were promoted in 1977. The year of ad-hoc promotion of applicant Nos. 4 & 5 is 1978. At the time they filed Writ Petition in 1982, they were still holding posts on such ad-hoc promotions. They filed the Writ Petition claiming regularisation of their postings as Electrical Chargemen from the date when they have been promoted on ad-hoc basis. On 22.1.1972 the Railway Administration had issued a letter (Annexure-B of the application) giving instructions that employees promoted on ad-hoc basis as Claims Tracers should be regularised. The Gujrat High Court on the basis of this letter has passed an order in the Special Civil Application No. 929 of 1975 directing that the ad-hoc promotees as Claims Tracers be regularised. Similarly, on 11.4.1979, the

Railway Administration had issued fresh orders (Ex.D to the Application) reiterating the position that the ad-hoc Claims Tracers should be regularised if they have put in 3 years of service. The applicants, relying upon this instance of regularisation of service of ad-hoc Claims Tracers, have contended that they should also be regularised as they have put in more than 3 years service on ad-hoc basis as Electrical Chargemen. In the application it is also stated that in Jaipur Division, Assistant Signal Inspectors who were appointed on ad-hoc basis were regularised in accordance with the 1972 instructions.

3. It is not in dispute that the post of Electrical Charge~~man~~ is a selection post and as per the rules an incumbent seeking promotion to that post is required to appear and pass a written selection test. Those who pass such test are orally interviewed and thereafter a decision is taken as to whether the concerned incumbent is eligible for such promotion. The applicants appeared for such test which was held on 19.7.1981. However, they failed in that test. The applicants claim that they were compelled to appear for such test though they were not bound to do so appear. The applicants apprehended that they would be reverted to their substantive posts as Electrical Fitters and hence they filed a Writ Petition in the High Court claiming regularisation of their services as Electrical Chargemen from the date of their ad-hoc promotions.

4. It appears that in 1983 all the applicants cleared themselves in the written test and the oral

interview and they have been regularised in the services from 1983. But the main claim of the applicants still remains; namely regularisation from the dates of their ad-hoc promotions. The applicants have amended the said Writ Petition challenging the constitutional validity of Article 323-A of the Constitution and the Administrative Tribunal Act, 1985. However, that aspect is not now relevant in view of the decision of the Supreme Court. This is more so when Mr. Masand for the applicants did not urge anything in that respect.

5. The respondents have filed their replies at the stage of admission and Mr. Master submitted that the said reply may be treated as a detailed reply. It was contended that the post of Electrical Chargeman is a selection post and the selection is made on the basis of written test and oral interview. It was submitted that the applicants have voluntarily appeared for the written test in 1981 and that after having failed in that test, they should not be permitted to contend that they should be regularised without passing such test and from the date of their ad-hoc promotions. On merits, the Respondents contended that a selection post held on ad-hoc basis cannot be regularised from the date of such ad-hoc promotion inasmuch as that would be inconsistent with rules. The letters of 1972 and 1979 issued by the Railway Administration pertain to the posts of Claims Tracers. Similarly, the Gujrat High Court has given a decision about Claims Tracers. It was submitted that the said 2 letters and the judgment of the Gujrat High Court have a restricted operation as they were based upon the facts and circumstances of the promotions of Claims Tracers. As

far as the regularisation of Assistant Signal Inspector is concerned, it was contended that those posts were filled in only by suitability test while the post of Electrical Charge man is a selection post. It was then urged that one Madhusudan Bose had filed a Writ Petition No. 193 of 1981 in the High Court claiming similar reliefs on the same grounds which are being agitated in the present litigation. The said Writ Petition was dismissed. Appeal was filed against that decision and we were told that at the time of hearing the said appeal was also dismissed.

6. It was contended by Mr. Masand that in view of the letters of the Railway Administration issued in 1972 and 1979, as also in the background of the judgment of the Gujarat High Court all the applicants are entitled to regularisation. Mr. Master submitted that this claim is not admissible inasmuch as the applicant appeared in the test in 1981 and failed therein. Not only that, but even during the pendency of the Writ Petition they appeared for such written test in 1983, and have cleared themselves. It was submitted that after having participated in the selection test in 1981 and 1983 it would not be possible for the applicants to contend that the selection test was not mandatory and there should be regularisation after completion of 3 years service on ad-hoc promotions. He argued that the applicants would be estopped from making such a claim. There is much substance in the submission and we are not inclined to permit the applicants to make a claim for regularisation from the date of their ad-hoc promotions.

7. However, we would also like to consider the merits of the claim. Mr. Masand relied upon the decision of the Principal Bench of the Central Administrative Tribunal in the case of S.C. Jain V/S. Union of India & Others reported in 1986(3) All India Services Law Journal (CAT) 123. In that case, certain Technical Assistants were appointed on 29.12.1972 on ad-hoc basis as the Recruitment Rules were not framed. The Rules were so framed on 30.12.1978 and the applicants' appointment were regularised. The question arose as to whether service from 1972 to 1978 can be counted for determining the seniority of the applicants qua certain other employees. Paragraph 8 of the judgment shows that the Principal Bench relied upon the decision of the Supreme Court in the case of Narendra Chadha V/S. Union of India, reported in A.I.R. 1986 Supreme Court 638 and held that the ad-hoc service cannot be ignored and should be counted for the seniority purposes. Similar view has been taken by the Principal Bench in the case of K.N. Misra and Others V/S. Union of India & Others, reported in 1986(3) All India Services Law Journal, CAT, 17 wherein it is held that when the

quota system has failed, the seniority of the promotees should be counted from the date of their continuous officiation in the promotional posts, Mr. Master for the respondents submitted that the above mentioned decisions cannot be said to be good law in view of the recent decision of the Supreme Court in the case of Ashok Gulati and Others V/S B.S. Jain and Others, reported in A.I.R. 1987 Supreme Court, 427. In the case before the Supreme Court, there were certain ad-hoc appointments as temporary engineers. Thereafter, regular recruitment was made. The ad-hoc appointees also participated in the selection process. They were selected but they were placed far below in the seniority list. While making promotions to the posts of Executive Engineers, the Government did not take into account the said ad-hoc service and promoted certain other persons who were otherwise senior. The applicants who had rendered the said ad-hoc service challenged this action. The High Court accepted their contentions and held that their ad-hoc service should be counted while fixing the seniority. Then the matter went to the Supreme Court. The Supreme Court took into account two important factors viz., that the initial ad-hoc appointments were 'de hors' the rules and that the orders themselves showed that the appointments were liable to be terminated without any notice. Not only that, but the orders also made it clear that the appointees

would not be entitled to any seniority on the basis of such service. We would like to reproduce certain portions of the judgment in paragraph 13:

" We are not aware of any principle or rule which lays down that the length of continuous officiating service is the only relevant criterion in determining seniority in a particular cadre or grade, irrespective of any specific rule of seniority to the contrary."

After considering the earlier cases, the Supreme Court has further observed in that paragraph as follows:-

" ... These authorities nowhere lay down that the same principle i.e., the length of continuous officiation must be the sole guiding factor and the only criterion in determining the seniority of such ad-hoc employees vis-a-vis direct recruits..."

In paragraph 23 the Supreme Court has discussed the matter in the following words:-

" It would be repugnant to all accepted concepts of service jurisprudence if the claim of persons like respondents Nos. 1 & 2 who were employed as Temporary Engineers on ad-hoc basis de hors the rules for six months at a time were extended the benefit of their continuous officiation as such ad-hoc employees in reckoning their seniority vis-a-vis direct recruits in considering their eligibility under r. 6(b) of the Class I Rules for promotion to a higher grade or post of Executive Engineer..."

In para 24 the Supreme Court has considered the earlier decision in Narender Chadha's case and has held as follows:

" No doubt there are certain observations in the two cases of G.P. Daval and Narender Chadha which seem to run counter to the view we have taken, but these decisions turned on their own peculiar facts and are, therefore, clearly distinguishable and they do not lay down any rule of universal application."

8. It is thus clear that in Ashok Gulati's case the Supreme Court held that continuous service on ad-hoc basis cannot be relevant for deciding the seniority etc.

9. It will be advantageous to look to the promotion orders of the applicants when they were promoted on ad-hoc basis as Electrical Chargeement. It is not necessary to mention the relevant portion from the promotion order of each of these applicants. Suffice it to say that every order states that the promotion is purely on ad-hoc basis and that the promotion does not mean that he has superseded his seniors or that his name is on the panel for selection. It is further stated that such ad-hoc promotion does not confer any right for permanent promotion. Thus, here are ad-hoc promotions which are de hors the rules. The rules contemplated that the promotions should be by way of selection. The candidate has to appear for the written test. After passing such a test he has also to appear for oral interview and thereafter a decision is taken as to whether he deserves to be selected or not. In the present case the applicants got ad-hoc promotion even without such selection test, Mr. Master is right when he contends that

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the entire system of selection will have to be set at naught if the ad-hoc promotees are to be regularised from the dates of their ad-hoc appointments even though they have not passed the selection tests. This was exactly the claim of the applicants when they filed the Writ Petition in the High Court. Of course, during the pendency of the litigation they have passed the selection test in 1983, and still they claim that they should be treated as regular promotees from the dates of ad-hoc appointments. In our opinion, this is not permissible. Mr. Master relied upon the decision of Punjab and Haryana High Court in the case of Amar Singh, Junior Analyst and Others V/S. The State of Punjab & Others reported in 1983(3) Service Law Reporter, 264, wherein it is laid down that the person who was appointed on ad-hoc basis and who was subsequently regularised will not be able to count ad-hoc service for the purpose of seniority. We need not consider this decision in details, particularly when the Supreme Court has clearly laid down the principle in Ashok Gulati's case.

10. Mr. Masand relied upon the decision of the Bombay High Court in the case of Jethani Mohan Chanchaldas, Civil Judge V/S. Union of India reported in 1984(1) All India Service Law Journal, 76. In that case the petitioner was originally appointed as Assistant Public Prosecutor. A competitive examination was held to fill the posts of Civil Judges (Junior Division). The Petitioner was selected for the post. He was appointed as Civil Judge on ad-hoc basis. Thereafter, he was reverted to the post of Assistant Public Prosecutor. He challenged the said reversion. The High Court held that in the facts and circumstances of the case the Petitioner's appointment as a Civil Judge cannot be said to be on ad-hoc basis and thus reversion founded upon the

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misconduct constitutes punishment. This decision is of no use to the applicants inasmuch as it was given in the peculiar facts of the case.

11. Mr. Masand then relied upon the two letters of the Railway Administration and also the decision of the Gujrat High Court. We have already observed that Claims Tracers who were initially appointed on ad-hoc basis were regularised after completing 3 years of service. In our opinion, the regularisation of certain posts made on different basis cannot always be a good criterion for deciding regularisation of other posts. Of course, everything will depend on the facts of each case. After taking into account the fact that the post of Electrical Chargeman is a selection post we are not inclined to accept the contention of the applicants that without passing the selection test they can get regularisation from the date of their ad-hoc promotions. This is more so when obviously such ad-hoc promotions were de hors the rules. Before closing, it is also necessary to mention that the Bombay High Court has rejected a claim similar to the one made before us, when it dismissed Madhusudan's Writ Petition. The appeal filed by him is also dismissed.

12. Mr. Madhusudan relied upon Rule 302 of the Railway Establishment Manual and Mr. Master wants to rely on Rule 306. Both the rules deal with the seniority of the railway employees. In our opinion, these rules would not be much relevant as the controversy in the litigation is about counting of ad-hoc service for regularisation.

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The net result, therefore, is that the application (i.e. Writ Petition No. 333 of 1982) is dismissed. Parties to bear their own costs.

B.C. Gadgil

(B.C. GADGIL)
VICE - CHAIRMAN.

J.G. Rajadhyaaksha

MEMBER (A).

10/6/98

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